



DEPARTMENT OF AGRICULTURE

Office of Procurement and Property Management

7 CFR Part 3203

RIN 0599-AA13

Guidelines for the Transfer of Excess Computers or Other Technical Equipment Pursuant to Section 14220 of the 2008 Farm Bill.

AGENCY: Office of Procurement and Property Management, USDA.

ACTION: Final rule.

SUMMARY: The Office of Procurement and Property Management (OPPM) of the U.S. Department of Agriculture (USDA) is establishing and implementing procedures for the transfer of excess computers or other technical equipment for the purposes of distribution to a city, town, or local government entity in a rural area.

DATES: Effective Date: [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Mr. Michael R. Johnson, Office of Procurement and Property Management, USDA on (202) 720-9779 or by Email at michaelr.johnson@dm.usda.gov.

SUPPLEMENTARY INFORMATION:

A. Background

A proposed rule was published in the **Federal Register** on May 16, 2011 (76 FR 28188-28191, FR Doc No: 2011-11601) soliciting comments on the establishment of Guidelines for the Transfer of Excess Computers or Other Technical Equipment Pursuant to Section 14220 of the 2008 Farm Bill. The proposed rule would have established 7 CFR part 3201, but the final rule will be establishing part 3203. The proposed rule had a comment period of 60 days ending July 15, 2011. No comments were received through email, fax, mail, or hand delivery/courier. A total of 12 comments were received through the Federal eRulemaking Portal. Of the comments received, two were sent as tests, nine were submitted to the wrong docket and subsequently moved to the correct docket, and one comment had multiple questions and comments that were put into one of three categories: 1) Comments on the Farm Bill itself, which will not be addressed; 2)

Questions on personal property disposal which are covered by Federal Management Regulations, Agriculture Property Management Regulations and internal agency regulations and policies, and will not be addressed; and 3) A question that asked who is responsible and what happens to the equipment if the items are refurbished and the intended recipient changes its mind or cannot pay the cost (go to www.Regulations.gov to see entire comment). Two revisions have been made as a result of the comment referenced above: 1. The word ‘designated’ has been added before ‘organization’ in sections 3203.6(c), 3203.7 and 3203.8; and 2. Additional language has been added to section 3203.4(e)(5) stating that the recipient needs to furnish a copy of the agreement between the recipient and its designated organization.

B. Executive Orders Number 12866 and 13563

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a non-significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, the rule has not been reviewed by the Office of Management and Budget.

This rule implements Section 14220 of the 2008 Farm Bill. It is expected that the benefits that accrue to cities, towns, and local government entities in rural areas from the

receipt of excess USDA computers and technical equipment will exceed the costs to USDA in providing such equipment.

C. Regulatory Flexibility Act

USDA certifies that this rule will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. The impact of this regulation will be primarily limited to rural towns and government entities. The Department estimates that 400 eligible entities will submit requests for donated equipment annually. As small businesses are not considered eligible entities under this regulation, the rule will not have a significant impact on the small business community or on a substantial number of small businesses. The Department invited comments on its estimates for the potential impact of this rule on small businesses and did not receive any comments.

D. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 through 3520), the information collection is currently approved under OMB control number 0505-0023.

E. Executive Order 12630

This rule has been reviewed in accordance with Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and does not contain policies that would have implications for these rights.

F. Executive Order 13132

This rule has been reviewed in accordance with Executive Order 13132, Federalism, and does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Provisions of this rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various government levels.

G. Unfunded Mandates Reform Act of 1995

This rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), and therefore a written statement is not required.

H. Executive Order 12372

This rule has been reviewed in accordance with Executive Order 12372, Intergovernmental review of Federal programs, and does not establish federal financial assistance or direct Federal development with State and local governments, and is

therefore outside the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

I. Executive Order 13175

This rule has been reviewed in accordance with Executive Order 13175, Consultation and Coordination With Indian Tribal Governments, and does not have tribal implications or impose unfunded mandates with Indian tribes.

J. E-Government Act Compliance

USDA is committed to compliance with the E-Government Act, which requires Government agencies, in general, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. This rule requires one letter from requestors that can be sent electronically to USDA. USDA will continue to seek other avenues to increase electronically submitted information.

List of Subjects in 7 CFR 3203

Computers, Excess, Excess computers, Excess government property, Government property, Other technical equipment, Personal property, Technical equipment.

For the reasons set forth in the preamble, the Department of Agriculture adds 7

CFR part 3203 to read as follows:

**PART 3203---GUIDELINES FOR THE TRANSFER OF EXCESS COMPUTERS
OR OTHER TECHNICAL EQUIPMENT PURSUANT TO SECTION 14220 OF
THE 2008 FARM BILL**

Sec.

- 3203.1 Purpose.
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Authority: 7 U.S.C. 2206b

§3203.1 Purpose.

This part sets forth the procedures to be utilized by USDA when transferring excess USDA computers or other technical equipment to an organization for the purposes

of distribution to a city, town, or local government entity in a rural area as authorized by 7 U.S.C. 2206b.

§3203.2 Eligibility.

To be eligible under this part:

- (a) A city, town, or local government entity must be located in a rural area as defined in 7 U.S.C. 1991(a)(13)(A).
- (b) A designated organization must:
 - (1) Have the documented capability to refurbish and distribute excess computers or other technical equipment;
 - (2) Serve the interest of cities, towns, or local government entities in rural areas; and
 - (3) Have been designated by an official of a city, town, or local government entity in a rural area to receive excess computers or other technical equipment under this part.

§3203.3 Definitions.

Cannibalization means to remove serviceable parts from one item of equipment in order to install them on another item of equipment in order to repair or enhance its operability.

City, town, or local government entity in a rural area as defined in 7 U.S.C.

1991(a)(13)(A) means any area other than:

- (1) A city or town that has a population of greater than 50,000 inhabitants; and
- (2) Any urbanized area contiguous and adjacent to such a city or town described in paragraph (1) of this definition.

Computers or other technical equipment means central processing units, laptops, desktops, computer mouses, keyboards, monitors, related peripheral tools (e.g., printers, modems, routers, servers, multimedia projectors, multifunctional devices, external hard drives) and fax machines. This term may also include computer software where the transfer of a license is permitted.

Designated Organization means an organization that has been selected by an official of a city, town, or local government entity in a rural area to provide refurbishing services on donated computer and technical equipment.

Excess means any property under the control of a USDA agency that is no longer required for that agency's or another USDA agency's needs, as determined by the agency head or designee.

Property Management Officer (PMO) is an eligible recipient's designated point of contact, responsible for adherence to procedures described in this part.

Recipient means a city, town, or local government entity located in a rural area as defined in 7 U.S.C. 1991(a)(13)(A) that may receive excess computers or other technical equipment under this part.

Refurbish means to make 'like new' by the process of major maintenance or minor repair of an item, either aesthetically or mechanically.

§3203.4 Procedures.

- (a) Each agency head will designate, in writing, an authorized official to approve transfers of excess computers or other technical equipment under this part consistent with the Department's policies on personal property management.
- (b) Excess computers or other technical equipment must first be internally screened to ensure it is not needed elsewhere in the Department.
- (c) To receive information concerning the availability of USDA excess computers or other technical equipment, an eligible recipient's PMO should contact any USDA office near to its location.
- (d) The USDA employee responsible for personal property, at the office contacted, will review the request for eligibility of the recipient and the availability of excess computers or other technical equipment. The USDA employee will inform the requestor of the outcome of the review (e.g. eligibility, the availability of excess computers or other technical equipment).
- (e) Eligible recipients will express their interest in receiving property under this part by submitting a request, on letterhead paper (electronic copy is acceptable), to a USDA authorized official. All requests must originate from, and be signed by, a representative of an eligible recipient city, town, or local government entity. Requests must include:
 - (1) Type of excess computers or other technical equipment requested (should include specifications);
 - (2) Justification for eligibility (see §3203.2);
 - (3) Contact information of the requestor;

(4) Logistical information such as when and how the property will be picked up; and

(5) Information on the recipient's designated organization (company name, contact person and phone number) that is designated to receive and refurbish the property for the eligible recipient along with a copy of the agreement between the recipient and its designated organization.

- (f) Excess computers or other technical equipment should be inspected before the property is transferred or the USDA agency should be contacted to verify the condition of the property.
- (g) If the condition of the property is acceptable, the recipient or its designated organization will coordinate with the USDA contact for transfer of the property. Since the USDA agency office may have several requests for property, it is critical that the recipient or its designated organization contact USDA as soon as possible. Property will usually be allocated on a first-come, first-served basis, taking into account fair and equitable distribution of excess computers or other technical equipment to all eligible recipients.
- (h) Transfers will be accomplished using the appropriate USDA property transfer form. The transfer form must contain the following statement:
“Property listed on this form is being transferred pursuant to the provisions in 7 CFR Part 3203.” The form must be signed by an authorized official of the USDA agency and an official of the recipient organization.
- (i) A copy of the request that transferred the property must be attached to the transfer order and kept in the USDA agency's files.

- (j) When property is transferred to a designated organization, a copy of the completed transfer document will be sent to the eligible recipient government entity for its records. Eligible recipients are responsible for following up with the designated organization they have designated for the final receipt of the property.
- (k) In cases where an agency receives competing requests for excess computers or other technical equipment, to the extent permitted by law, the agency shall give full consideration to such factors as national defense requirements, emergency needs, energy conservation, preclusion of new procurement, fair and equitable distribution, transportation costs, and retention of title in the Government.
- (l) Prior to transferring any property pursuant to this Act, the transferring agency must remove data from the excess computers or other technical equipment (memory or any kind of data storage device) according to accepted sanitization procedures. To the maximum extent practicable, the transferring agency must remove data using a means that does not remove, disable, destroy, or otherwise render unusable the excess computers or other technical equipment or components. It is imperative that agencies take the necessary steps to ensure that no personal computer, server, external storage device, or related electronic component is transferred that might contain sensitive or confidential information. See Departmental Manual 3575-001, Security Controls in the System Life Cycle/System Development Life Cycle, for additional guidance.

§3203.5 Dollar limitation.

There is no dollar limitation on excess computers or other technical equipment obtained under this part.

§3203.6 Restrictions.

- (a) Only an authorized USDA official may approve the transfer of excess computers or other technical equipment under this part.
- (b) Excess computers or other technical equipment may be transferred for the purpose of cannibalization, provided that the requestor submits a statement clearly indicating that cannibalization of the requested property will have greater benefit than utilization of the item in its existing form.

Cannibalization is a secondary use of equipment and, therefore, these requests are considered subordinate to requests for primary use.

- (c) Designated organizations will only receive property for cannibalization when it has been specifically requested by the recipient and the cannibalized parts must only be used in computers or other technical equipment destined for eligible recipients.

§3203.7 Title.

Title of ownership to excess computers or other technical equipment transferred under this part shall automatically pass to the recipient once the transferring agency and recipient or designated organization sign the transfer form indicating that the designated organization has received the property.

§3203.8 Costs.

The designated organization must pay any costs associated with packaging and transportation of the property unless it has made other arrangements. The designated organization must remove property from the USDA agency's premises within 15 calendar days after being notified that the property is available for pickup, unless otherwise coordinated with the USDA agency. If the recipient decides prior to picking up or removing the property that it no longer wants the property, it must notify the USDA agency that approved the transfer request that the property is no longer needed.

§3203.9 Accountability and recordkeeping.

- (a) USDA requires all excess computers or other technical equipment received by an eligible recipient pursuant to this part be placed into use within one year of receipt of the property and used for at least one year thereafter. The recipient's PMO must maintain accountable records for such property during this time period.
- (b) GSA requires that all excess personal property given to non-federal recipients

be reported each fiscal year. USDA agencies that transfer property under this part must report the transfers in their annual reports to OPPM and include both the recipient and organization names. OPPM will review the reports for accuracy, as well as fair and equitable distribution of the excess computers or other technical equipment, before submitting to GSA.

§3203.10 Disposal.

When property received under this part is no longer needed by the recipient, it must be disposed of in an environmentally sound manner that is not detrimental or dangerous to public health or safety and in accordance with all Federal, state and local laws.

§3203.11 Liabilities and losses.

USDA assumes no liability with respect to accidents, bodily injury, illness, or any other damages or loss related to excess computers or other technical equipment transferred under this part. The recipient/designated organization is advised to insure or otherwise protect itself and others as appropriate.

April 27, 2012

Lisa M. Wilusz,

Date

Director.

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